82-170

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No. _____

In The

Supreme Court Of The United States

October Term 1982

JOSEPH A. FESSLER AND ANN FESSLER, HIS WIFE,
Petitioner,

v.

REDEVELOPMENT AUTHORITY OF THE CITY OF WILKES BARRE PENNSYLVANIA, KEYSTATE BAKERY, ZATCOFF, INC. WOOD STREET WILKES BARRE, PA.; DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT PHILADELPHIA, PA.; SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, WASHINGTON, D.C.

Respondent

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

---

Joseph A. Fessler
R.D. #1, Trailwood
Wilkes Barre, Pennsylvania
18702
Telephone: (717) 826-0060
Attorneys for Petitioner

QUESTIONS PRESENTED FOR REVIEW

Why Redevelopment Authority refused to pay me relocation payment, failed to inform me of my rights and benefits.

Why my lawyer never brought the question of relocation payment up in court.

Why I had to appeal myself to Redevelopment Authority, Hud, Philadelphia, petition Luzerne County Court, Middle District Court, Court of Appeals,no court or attorneys will handle it, area director Hud said I could take it to court.

Why my real estate was appraised low by Redevelopment Authority.

There Appraisal	My Appraisal
$55,000	$92,000
$26,000	$62,000
$38,000	$59,000

Why two real estate appraisals were made on my property, 214 East Market, one for myself and one for my tenant.

Why was the M & E real estate which was awarded

to me by the Board of View taken from me and given to my tenant.

Why did the Redevelopment Authority and Hud force me into this mess making me spend $14,000 in Attorney's fee's not counting my time and money spent on making these appeals.

Why I wasn't payed $25,000 in rent, the booklet put out by Community Development states they would pay landlord rent until last tenant was moved out. Last tenantwas there for over two years.

Why was I not payed $3,100 for personal items left in the basement at 214 E. Market St.

Why Redevelopment Authority, Hud Philadelphia won't release documents regarding my cases. These documents would assist me in my case.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

No._____

JOSEPH A. FESSLER AND
ANN FESSLER, HIS WIFE

PETITIONER,

v.

REDEVELOPMENT AUTHORITY OF THE CITY OF WILKES-BARRE, PENNSYLVANIA; KEYSTATE BAKERY, ZATCOFF INC.,WOOD STREET,WILKES-BARRE,PA.; DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,PHILADELPHIA,PA.; SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, WASHINGTON,D.C.

RESPONDENT,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

JOSEPH A. FESSLER AND ANN FESSLER, his wife, respectfully prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Third Circuit, filed on 5 April 1982.

OPINIONS BELOW

The Court of Middle District of Pennsylvania entered its memorandum decision November 20,1980. A copy of the order is attached as Appendix A.

The Court of Appeals entered its memorandum decision on April 5, 1982. A copy of the order is attached as Appendix B.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V:

> Nor Shall any person .... be deprived life, liberty, or property, without due process of law ....

STATEMENT OF THE CASE

1. Denied the right to appeal relocation payment for properties 312-314, rear 312 East Market Street, 289, 291, 291½ East Market Street, 16 South Grant, Rear 16 South Grant Street, all properties are located in Wilkes-Barre, Penna. A written appeal was filed with Wilkes-Barre Redevelopment Authority and was turned down because I had another rental building, this was also in the project area. An appeal was filed with Paul Kane, Area Director, Department of Housing and Urban Development, Philadelphia, Penna. In my opinion he "RUBBER STAMPED " Wilkes-Barre Redevelopment documents regarding my eligibility for relocation payments. According to HUD Relocation Manual 1371.Rev Chapter 6 Sec. 3 page 29-30 the sole remaining establishment shall not be considered another business. To be Considered as another business, Penna.

Law States another establishment has to be outside the project area. All my properties were inside the project area. I was told I could appeal their finding in Court. I filed an appeal in Luzerne County Court, Wilkes-Barre,Penna. I never heard from them regarding the matter, so I filed my appeal again with the Federal Court Middle District, Scranton,Penna.,United States Court of Appeals, Third Circuit, Philadelphia,Penna. amd was turned down again. They said I could appeal in Court, What Court honors these appeals ? These projects are 90% funded by Federal Government HUD Manual Covers Federal Laws. I feel the Courts is biased for not hearing my appeal regarding this matter. In my opinion Wilkes-Barre Redevelopment Authority and all my lawyers failed to give me the correct information on relocation. Why would I take around $1400.00 when I am entitled to $100,000.00 for relocating. If I was fully informed it is reasonable to assume that I would have taken the $100,000.00 for relocating my business. This information is according to HUD Relocation handbook 1371. 1 Chapter 6

Sec 2 page 14-15.

Redevelopment Authority is using the same papers appealed by me. "General Release" paper that was in trash can when I left Louis Attardo office, he was the relocation specialist. This General Release covers Federal and State Emminent Domain Laws.

Seeking review of my real estate appraisals. Redevelopment appraisal were low for all my properties. I feel this is why they have relocation payments to cover their low appraisals of the properties. I feel the money I was eligible to receive was used on other projects in Wilkes-Barre, Penna. The only people that got full information from Wilkes-Barre Redevelopment and HUD are influential people and friends of redevelopment authority.

No information was brought up to the board of View, Luzerne County Court in regards to relocation payment. A false statement was made to the Deputy Auditor General Office regarding this matter.

2. Regarding property 214 East Market Street, Wilkes-Barre, Penna. Wilkes-Barre Redevelopment Authority and my lawyers failed to give me the

correct information regarding relocation, the same as they did with the other properties. The real estate appraisal was again low forcing me to take this into Court again.

The Board of View awarded me the $4100.00 for M&E real estate. Instead this $4100.00 was given to my tenant Keystate Bakery Zatcoff Inc. Who was not the owner only a tenant. In my opinion Wilkes-Barre Redevelopment Authority was using this to take over my real estate by illegal means. This M&E real estate should be three times the amount of $4100.00. Effort to obtain documents from Wilkes-Barre Redevelopment Authority and HUD regarding M&E real estate have been fruitless. The only papers I have obtained from them have been to their benefit. I have spent thousand of dollars in lawyers fees trying to straighten this mess out. HUD manual covers lawyers and appraisal fees. State of Penna. only allows $500.00. How in this day and age can you get a lawyer and appraisers for this amount. Wilkes-Barre Redevelopment Authority and HUD got me into this mess and they should have to pay in full for my lawyers and appraisal fees. These fees

totaled $14,000.00 for all cases which I was forced to take into court. This does not count my time and money. All cases were won by me so they should be obligated to pay. This in according to HUD relocation handbook 1371. 1 Rev appendix 1 Section 304,62 Stat 933 ante P449 68 Stat. 1241.

3. Seeking Medical bills caused by tactics used by Wilkes-Barre Redevelopment Authority to acquire my properties.

4. Seeking recovery of loss of rent monies caused by Wilkes-Barre Redevelopment Authority moving my tenants out arbitarely, telling tenants not to pay me rent, thereby forcing me out of business. After forcing my tenants out they kept one of my tenants, Keystate Bakery there for well over (2) two years. Documents stating Redevelopment Authority would reimburse the landlord for the rent he would have received had the tenant not been relocated and to pay until last tenant was moved out. Last tenant,Keystate Bakery, was moved out well over 2 years. I feel I am eligible to collect rent money for well over two years over $25,000.00 dollars. Because I never collected just compensation for that length of time.

5. Seeking recovery of $3100.00 for personal items,

material, tools, miscellanous left in the basement. This is according to HUD relocation handbook 1371.1 Rev. 42.70. Appraisal of this amount was done by Wilkes-Barre Redevelopment appraisers.

6. Wilkes-Barre Redevelopment Authority, HUD Washington D.C. are trying to dominate the Housing in the City of Wilkes-Barre by Building 2400 units running me out of business so they could take over the Housing in the city. For this reason I feel I wasn't given a chance to relocate.

7. All documents were forwarded to United States District Court for Middle District of Pennsylvania & United States Court of Appeals For The Third Circuit, Philadelphia, Penna.

REASON FOR GRANTING THE WRIT

I am attempting to proceed under 42 U.S.C. &1983 because persons who failed to give me the correct information who did not tell the truth to the court made false statement all who work for Wilkes-Barre Redevelopment Authority, Wilkes-Barre,Pa. They should be subject to &1983 Civil Action for deprivation of rights. Every person who, under color of any State ordinance, regulation, custom, or usage of the state or Territory, subjects,

or causes to be subjected, any citizen of the United States or the person within jurisdiction there of to the Deprivation of any rights, privileges immunties securd by Constitution and law shall be liable to the party injured in action of law, suit in equity, or other proper proceeding for redress.

CONCLUSION

For the foregoing reasons, petitioners Joseph A. Fessler and Ann Fessler his wife respectfully request that a writ of certiorari issue review the Judgment of the United States Court of Appeals for the Third Circuit. Seeking 1.5 Million dollars damages.

Respectfully submitted

Dated 1 July 1982

JOSEPH A. FESSLER
RD#1, TRAILWOOD
WILKES-BARRE, PENNSYLVANIA 18702
TELEPHONE (717) 82-60060
ATTORNEY for PETITIONER

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH A. FESSLER and ANN FESSLER, his wife Plaintiff	:	
vs.	:	
REDEVELOPMENT AUTHORITY OF THE CITY OF WILKES-BARRE,PA.; KEYSTATE BAKERY, ZATCOFF,INC., WOOD STREET,WILKES-BARRE,PA.; DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PHILADELPHIA,PA.; SECRETARY DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,WASHINGTON,D.C. Defendants	:	CIVIL ACTION NO. 80-0141

MEMORANDUM AND ORDER

Plaintiffs Joseph A. Fessler and Ann Fessler, his wife, filed the present action against the Redevelopment Authority of Wilkes-Barre,Keystate Bakery,Zatcoff, Inc.,the Department of Housing and Urban Development and the Secretary of HUD in Washington,D.C. on February 8, 1980. Plaintiffs were owners of several properties which were condemned by the Redevelopment Authority of the City of Wilkes-Barre in 1973. The sole remaining Defendant is the Wilkes-Barre Redevelopment Authority[1]

[1] On June 16, 1980 the Court entered an Order dismissing Keystate Bakery and Zatcoff,Inc. On July 28,1980 the Court dismissed the Department of Housing and Urban Development and the Secretary of HUD.(Documents #15 and #19).

which filed a motion for summary judgment along with a support-in brief on November 14, 1980. Because the Court has determined that it lacks jurisdiction over the subject matter of the controversy, we will enter an Order today dismissing Plaintiffs' claim.

Defendant's first argument is that Plaintiffs' Complaint fails to comply with Federal Rule of Civil Procedure 8(a) (1) which calls for a "short and plain statement of the grounds upon which the Court's jurisdiction depends." Plaintiffs have failed to allege any basis for federal court jurisdiction. For this reason alone Plaintiffs' case warrants dismissal. See Chasis v. Progress Manufacturing Co.,382 F. 2d 773 (3rd Cir 1967).

Plaintiffs entitle their Complaint an "Appeal and Review " of the payments made to them in the course of their eminent domain procedures in the Luzerne County Court of Common Pleas. They use the terms "negligence" and "defects" to describe the procedure of the Redevelopment Authority; they speak of their "dissatisfaction" with the compensation awards, and they ask the Court to award them damages for the " injustice" done to them in connection with the condemnation. The only possible federal claim would be an action for deprivation of

property without due process of law. In order to make such a claim Plaintiffs must, of course, allege a denial of a right secured by the Constitution or laws of the United States. Basista v. Weir, 340 F. 2d 74, 79 (3rd Cir. 1965). Taking as true the allegations of the Complaint, Cooper v. Pate, 378 U.S. 546(1964), the Court cannot find a federally protected right that has been violated.

Plaintiffs claim, in effect, that their property has been taken without just compensation. Article I, Section 10 of the Pennsylvania Constitution provides that " private property[shall not] be taken or applied to public use, without authority of law and without just compensation being first made or secured." And under the Eminent Domain Code of 1964, 26 P.S. 1-101 et seq., the Commonwealth has established a procedure which "fully protects the rights of the property owner and guarantees to him the constitutional safeguards to which he is entitled, including appropriate appellate review".

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2 In fact we note that inasmuch as Plaintiffs seek damages and attorneys' fees, they are attempting to proceed under 42 US.C. § 1983. Therefore, in addition to the other reasons set forth in this Memorandum, we point out that the Redevelopment Authority is not a "person", and is therefore not a proper party under 42 U.S.C. 1983. This fact alone would support the Court's dismissal of the present action.

Valley Forge Golf Club v. Upper Merion Township, 422 Pa. 227,230, 211 A. 2d 292,293 (1966); KOA v. Red Lion Municipal Authority, 381 F. Supp. 1163 (M.D.Pa. 1974) (Sheridan, C.J.). Plaintiffs allege certain defects in the state procedure, and they voice their dissatisfaction with their award, but they point out no constitutional infirmity in the state court procedure. Simple dissatisfaction with the result does not amount to a constitutional violation. As has been held in this Circuit, the Pennsylvania Constitution and Eminent Domain Code fully preserve all the constitutional rights due Plaintiffs with respect to the taking of public property. Elterich v. City of Sea Isle City, 477 F. 2d 289 (3rd. Cir. 1973). In addition adjudication of the claims presented by Plaintiffs would constitute an unwarranted intrusion into the jurisdiction of the state courts. KOA, supra; Elterich, supra; Kadash v. City of Williamsport, 362 F. Supp. 1343 (M.D. Pa.1973).[3]

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[3] See also 26 P.S. 1-401 which vests jurisdiction for "all condemnation proceedings " in the court of common pleas of the county in which the property is located.

The only remaining claims discernable from Plaintiffs' Complaint amount simply to a request for an appeal of the amount they were originally awarded.

They entitle their Complaint an " Appeal and Review" ; they complain of defects in the state court procedure, specifically, they were not provided with written appraisals, and their tenants were "arbitrarily moved without notice." Plaintiffs state that they were dissatisfied with the amounts they received and were not fully informed of their rights. If Plaintiffs were truly dissatisfied with the amounts they received, their right of appeal existed in the state courts. The Federal Courts do not sit as courts of review over alleged errors of state courts. Elterich, supra at 291; see Martin v. Creasy, 360 U.S. 219 (1959). Plaintiffs admittedly have accepted the profits of the eminent domain sales of their property. They had a right to appeal any adverse ruling in the state courts in a system that is fully equipped to a safeguard their property rights. Not only in the pleadings and record of this case, but even in the farthest reaches of the Court's imagination, there is simply no basis for the Court's jurisdiction over the

present controversy.

Defendant has raised several other substantive grounds for its motion to dismiss. It claims that res judicata bars the present action, that Plaintiffs' have released or waived their claims, and that Plaintiffs have failed to state a claim. Because we hold today that the Court lacks jurisdiction, we will not address these claims. Accordingly, because the jurisdiction of this Court was never asserted, and because the Court is convinced that it does not exist, upon the motion of Defendant the Court will dismiss the present action without further proceedings.[4]

Richard P. Conaboy
United States District Judge

DATED: NOVEMBER 20,1980

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[4] Federal Rule of Civil Procedure 12(h) (3) allows the Court to dismiss an action "whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter." See 7 Wright & Miller, Federal Practice and Procedure:Civil Section 1393 (2d Ed. 1979). The Court will therefore dismiss the present action without awaiting Plaintiffs' responsive brief. In addition, the record indicates that Plaintiffs failed to file a brief in opposition to the two previous motions to dismiss filed in this case.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH A. FESSLER and ANN FESSLER, his wife	:	
Plaintiff	:	
vs.	:	
REDEVELOPMENT AUTHORITY OF THE CITY OF WILKES-BARRE, PA.; KEYSTATE BAKERY, ZATCOFF INC.; WOOD STREET, WILKES-BARRE, PA.; DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, PHILADELPHIA, PA.; SECRETARY DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT WASHINGTON, D.C.	:	CIVIL ACTION NO: 80-0141
Defendants	:	

ORDER

NOW, this 20th day of November, 1980 in accordance with the attached Memorandum, the above-captioned case is hereby dismissed.

Richard P. Conaboy
United States District Judge

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 80-2807

FESSLER, JOSEPH A., FESSLER, ANN, his wife,
Appellants

vs.

REDEVELOPMENT AUTHORITY, CITY OF WILKES-BARRE, PA.; KEYSTATE BAKERY, ZATCOFF INC., WOOD STREET, WILKES-BARRE, PA.; DEPARTMENT OF HOUSING AND URBAN DEVELOPEMENT, PHILADELPHIA, PA.; SECRETARY DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, WASHINGTON, D.C.
Appellees

(D.C. Civil No. 80-0141)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Submitted Under Third Circuit Rule 12 (6)

April 5, 1982

Before: GIBBONS, MARIS AND GARTH, Circuit Judges

JOSEPH A. FESSLER
ANN FESSLER
RD#1
WILKES-BARRE, PA. 18702

Appellants Pro Se

HUGH F. MUNDY, ESQUIRE
FLANAGAN, DORAN, BISCONTINI & SHAFFER
85 West Union Street
Wilkes-Barre, Pa. 18702

Attorneys for Appellee, Redevelopment Authority,
City of Wilkes-Barre, Pa.

JUDGMENT ORDER

Joseph and Ann Fessler appeal from a final order dismissing their complaint against the Redevelopment Authority, City of Wilkes-Barre, Pa., and others, for lack of subject matter jurisdiction. There is no diversity of citizenship and no claim pleaded arising under the constitution or laws of the United States.

It is ORDERED and ADJUDGED that the judgment of the district court is affirmed. Costs are taxed in favor of appellee.

BY THE COURT,

Circuit Judge John Gibbons

DATED: April 5, 1982

Attest:

Sally Mrvos, Clerk

Office - Supreme Court, U.S.
FILED
AUG 2 1982
ALEXANDER L. STEVAS
CLERK

82-170

No.

In the Supreme Court of the United States

October Term, 1982

FESSLER, JOSEPH A., FESSLER, ANN, His Wife,
Petitioners

vs.

REDEVELOPMENT AUTHORITY, CITY OF WILKES-BARRE, PA.; KEYSTATE BAKERY; ZATCOFF, INC., Wood Street, Wilkes-Barre, Pa.; DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, Philadelphia, Pa.; SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, WASHINGTON, D.C.

BRIEF FOR RESPONDENT, REDEVELOPMENT AUTHORITY, CITY OF WILKES-BARRE, PA. IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF THE QUESTIONS PRESENTED FOR REVIEW

Whether or not the Supreme Court should grant Petitioners' Petition for Writ of Certiorari.

Whether or not the Federal Court lacked jurisdiction over the subject matter of the controversy.

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COUNTER-STATEMENT OF THE CASE

Petitioner, Appellant below, on February 8, 1980 filed a complaint, pro se, against the Redevelopment Authority of the City of Wilkes-Barre, Pennsylvania, Department of Housing and Urban Development, the Secretary of HUD and Keystate Bakery, Zatcoff, Inc.

The complaint was headed by Petitioners as follows:

> "Appeal and review of all phases of relocation payment under the Federal, State, Eminent Domain Laws. Review of all appraisal also payment of legal fees. Seeking damages by Court. Complaints review and seeking M & E Damages."

An answer to said complaint was filed by the Respondent, Defendant Authority, on March 11, 1980.

On February 29, 1980, Defendant Keystate Bakery filed a motion to dismiss, said motion being granted by the Court on June 16, 1980. No appeal was filed by the Petitioners herein.

On April 28, 1980, Defendants, Department of Housing and Urban Development and Secretary of Housing and Urban Development, filed a motion to dismiss, said motion being granted on July 29, 1980. No appeal was filed by the Petitioners herein.

On November 14, 1980, Defendant, Redevelopment Authority of the City of Wilkes-Barre, Respondent herein, filed a motion for summary judgment and supporting brief.

Counter-Statement of the Case

On November 20, 1980, the Court granted said motion and dismissed Petitioners' complaint determining that it lacked jurisdiction of the subject matter of the controversy.

On December 19, 1980, Petitioners filed an appeal from said determination to the U. S. Court of Appeals for the Third Circuit. On April 5, 1982, said Court affirmed the judgment of the District Court, stating that:

> "There is no diversity of citizenship and no claim pleaded arising under the constitution or laws of the United States."

On July 3, 1982, the Petitioner, Appellant below, petitioned this Honorable Court for a Writ of Certiorari, said petition which is now before the Court for resolution.

COUNTER-STATEMENT OF THE FACTS

Petitioners, Appellants below, alleged damages in excess of $2,000,000.00 resulting from declarations of taking filed against their properties pursuant to the Eminent Domain Code of the Commonwealth of Pennsylvania, 26 P.S. 1-101.

The properties at issue, and the dates upon which the declarations of taking were filed in the Court of Common Pleas of Luzerne County, are as follows:

July 31, 1973—289-291 East Market Street, 16 South Grant Street, filed to No. 5555 of 1973.

July 31, 1973—312-314 East Market Street, filed to Nos. 5552 of 1973.

October 13, 1975—214 East Market Street, filed to No. 9543 of 1975.

After separate hearings before Boards of View, and upon appeals filed by the Petitioners herein from the Board of View awards, each of the above matters proceeded to trial before the Court of Common Pleas of Luzerne County.

The Petitioners were present, and represented by counsel of their choice during each of the aforementioned proceedings.

As a result of the aforesaid proceedings, verdicts were entered as follows:

No. 5555 of 1973—Verdict in the amount of $63,000.00 rendered on March 13, 1974.

No. 5552 of 1973—Verdict in the amount of $35,000.00 rendered on September 30, 1975.

No. 9543 of 1975—Verdict in the amount of $57,000.00 rendered on February 9, 1978.

Copies of the aforesaid verdicts are attached to Respondent's answer as Exhibits A, B, and C.

Petitioners' claim for business dislocation damages was denied by the Respondent Authority on September 30, 1975 and by the Department of Housing and Urban Development on January 15, 1976. As to all other eligible relocation benefits, Petitioners secured the maximum allowable relocation benefits under the Eminent Domain Code and the Uniform Relocation Act. Full payment was rendered on March 1, 1974 and a general release was executed, for all relocation claims, on that date. A copy of correspondence, the checks in full payment and the exceuted release are attached to Respondent Authority's answer as Exhibit D.

ARGUMENT

Rule 17, U. S. Supreme Court Rules, states:

> "1. A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefore. The following, while neither controlling nor fully measuring the Court's decision, indicate the character of reasons that will be considered.
>
> (a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.
>
> (c) When a state court or a federal court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court.

Argument

2. The same general consideration outlined above will control in respect of petitions for writs of certiorari to review judgments of the Court of Claims, of the Court of Customs and Patent Appeals, and of any other court whose judgments are reviewable by law on writ of certiorari."

Contrary to the foregoing rule, it is the Respondents' position that the Petitioners have neither stated special or important reasons for the grant of their petition, nor presented reasons of the character indicated by Rule 17.

Such being the case, it is respectfully submitted that the Petition for Writ of Certiorari in this matter should not be granted.

Moreover, the decision of the Court below was correct. The Federal Court lacked jurisdiction over the subject matter of the subject controversy since:

(1) Petitioners' complaint failed to allege any basis for Federal Court jurisdiction.

(2) Petitioners' complaint failed to allege any facts sufficient to provide a basis for Federal Court jurisdiction.

(3) Petitioners' complaint was barred by the doctrine of res judicata.

Initially, it is the Respondents' position that the Federal Court lacked jurisdiction since Petitioners' complaint failed to comply with Rule 8 (a) (1), Federal Rules of Civil Procedure. Said rule states:

"(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third party claim, shall

contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction, and the claim needs no new grounds of jurisdiction to support it, . . ."

The Court in the instant controversy did not have jurisdiction and the Petitioners' complaint did not, in violation of Rule 8(a) (1), contain any allegation of jurisdiction. Such being the case, for this reason alone, Petitioners' case warranted dismissal.

The federal cases addressing this issue are in accord with the foregoing position. Federal jurisdiction must affirmatively appear on the face of the complaint and the failure to present facts consistent with federal jurisdiction is violative of Rule 8(a) (1), Federal Rules of Civil Procedure. *Chasis v. Progress Mfg. Co.*, 382 F.2d 773 (3rd Cir. 1967); *Smith v. Spencer*, 477 F.2d 1150 (C.A. N.J. 1973); *Gorham v. Edwards*, 160 F. Supp. 928 (D.C. N.Y. 1958).

Moreover, the fact that the Petitioners filed pro se should not lessen the standard to be applied. Even pro se complaints have been found to be fatally defective due to a failure to state a basis for federal jurisdiction, *Boyer v. State of Wisconsin*, 345 F. Supp. 564 (D.C. Wisc. 1972).

Secondly, it is Respondents' contention that, even if the Petitioners had complied with Rule 8(a) (1), the Federal Court lacked jurisdiction because the facts upon which the complaint was based failed to provide a basis for jurisdiction. The only possible federal claim indicated involved an action for the deprivation of property without due process of law. In order to make such a claim Petitioners must, of course, allege a denial of a right s.

cured by the Constitution or laws of the United States. *Basista v. Weir*, 340 F.2d 74 (3rd. Cir. 1965). The Petitioners failed to either allege, or substantiate, such a denial. Moreover, all of the rights of which Petitioners alleged they have been deprived are fully protected by the Constitution of the Commonwealth of Pennsylvania at Article 1, Section 10, which provides:

> ". . . private property shall not be taken or applied to public use, without authority of law and without just compensation being first made or secured."

Additionally, under the Eminent Domain Code of 1964, 26 P.S. 1-101 et seq., the Commonwealth has established a procedure which fully protects the rights of the owner and guarantees him the constitutional safeguards to which he is entitled. *Valley Forge Golf Club v. Upper Merion Twp.*, 422 Pa. 227, 211 A.2d 292 (1966); *KOA v. Red Leon Municipal Authority*, 381 F. Supp. 1163 (M.D. Pa. 1974).

It has been held in the Third Circuit that the Pennsylvania Constitution and the Eminent Domain Code fully preserve all the constitutional rights due to the Petitioners with respect to the taking of their property. *Elterich v. City of Sea Isle City*, 477 F.2d 289 (3rd Cir. 1973).

As evidenced by the counter-statement of facts, aforesaid, and the verdicts and release attached as Exhibits A, B, C and D to the motion for summary judgment, the Petitioners were fully protected by, and proceeded in accordance with, the Constitution and Eminent Domain Code. Adjudication of the claims herein presented would constitute an unwarranted intrusion into the jurisdiction

of the State Courts, *KOA supra; Elterich, supra; Kadish v. City of Williamsport,* 362 F. Supp. 1343 (M.D. Pa. 1973), particularly where the claims have been adjudicated by the State Courts.

The constitutional rights of the Petitioners having been fully preserved under State law, and the Petitioners having proceeded in accordance with that law, the Petitioners cannot now allege a deprivation of those rights in Federal Court.

Petitioner's statement that he is attempting to proceed under 42 U.S.C. 1983, not specifically raised below, is equally without merit, since the Respondent is not a "person", and is therefore not a proper party under 42 U.S.C. 1983.

Finally, it is submitted that the Federal Court lacked jurisdiction since the verdicts previously entered in this matter, as indicated in the counter-statement of facts and the exhibits attached to the motion for summary judgment, are res judicata to Petitioners' claims. The issues being the same and having been previously judicially considered, the Petitioners cannot be heard to complain that they are now dissatisfied with the results of the previous litigation or that they failed to pursue some available claim. Such is particularly the case when Petitioners were represented throughout the prior proceedings by counsel of their choice. *Heiser v. Woodruff,* 327 U.S. 726 (1946); *Anselmo v. Hardin,* 253 F.2d 165 (3rd Cir. 1958).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should not be granted.

Respectfully submitted,

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